THE MYSORE SUGARCANE CESS ACT, 1958

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MYSORE ACT No. 27 OF 1958

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THE MYSORE SUGARCANE CESS ACT, 1958.

(*Received the assent of the Governor on the Nineteenth day of December* 1958.)

AN ACT TO LEVY A CESS AND TO ESTABLISH A FUND FOR THE PURPOSES OF THE DEVELOPMENT AND IMPROVEMENT OF THE CULTIVATION, GROWTH AND MARKETING OF SUGARCANE AND OTHER IRRIGATED CROPS AND FOR OTHER MATTERS.

WHEREAS it is expedient to provide for the levy of a cess and establishment of a fund for the development and improvement of the cultivation, growth and marketing of sugarcane and other irrigated crops and for other matters ;

BE it enacted by the Mysore State Legislature in the Ninth Year of the Republic of India as follows :—

CHAPTER I

PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Act may be called the Mysore Sugarcane Cess Act, 1958.

(2) It extends to the whole of the State of Mysore.

(3) It shall come into force in such areas and from such date as the State Government may, by notification in the Official Gazette appoint.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(*a*) "Advisory Committee" means the Committee constituted under Section 13 ;

(*b*) "factory" means any premises including the precincts thereof wherein twenty or more workers are working or were working on any day of the preceding twelve months and in any part of which any manufacturing process connected with the production of sugar is being carried on, or is ordinarily carried on, by means of vacuum pans with the aid of power ;

(*c*) "Government" means the State Government;

(*d*) "local area" means any area comprised in such factories as may be specified in the notification under Section 3;

(*e*) "notification" means a notification published in the Official Gazette;

(*f*) "notified factory" means a factory specified in the notification under Section 3;

(*g*) "occupier" means the person who has ultimate control over the affairs of a notified factory:

Provided that where the affairs of such factory are entrusted to a managing agent, such managing agent shall be deemed to be the occupier;

(*h*) "prescribed" means prescribed by rules made under this Act;

(*i*) "ton" means a ton of two thousand, two hundred and forty pounds (avoirdupois).

CHAPTER II

Levy and Collection of Cess

3. *Local area.*—The Government may, by notification, specify any factory the area comprised in which shall be a local area for the purposes of this Act.

4. *Imposition of cess.*—A cess at such rate not exceeding six rupees per ton, as may be specified by notification by the Government shall be levied on the entry of sugarcane into a local area for consumption or use therein:

Provided that for the purpose of levying the cess, there shall be deducted from the gross weight of sugarcane entering into the local area during any month for consumption or use, such proportion thereof as may be prescribed representing the average weight of the tops of the cane plant consisting of pith devoid of any sugar content and leaves and other trash usually present in the sugarcane and the cess shall be levied only on the remaining weight of the sugarcane after such deduction has been made.

5. *Reduction of cess payable.*—(1) Notwithstanding anything contained in Section 4, the Government may, by notification, reduce or remit the cess payable by an occupier of a notified

factory if it is satisfied that the sugar produced in such factory is exported at a loss out of India under a scheme sponsored by the Government of India for promotion of export of sugar.

(2) Every notification issued under sub-section (1), shall be laid as soon as may be after it is issued, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two or more sessions and if before the expiry of that period, either House of the State Legislature makes any modification in the notification or directs that the notification shall not have effect, and if the modification or direction is agreed to by the other House, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be.

6. *Registration of occupiers of notified factories.*—(1) The occupier of every notified factory in which sugarcane is consumed or used shall get himself registered under this Act.

(2) An application for such registration shall be accompanied by such fee and shall be made to such authority and in such manner as may be prescribed.

(3) On receipt of such application and after due verification by the authority concerned, the occupier shall be registered and a certificate of registration granted to him.

(4) An occupier registered under this section shall be liable to pay the prescribed fee for every year subsequent to that in which he was registered.

(5) The certificate of registration granted under this section shall be subject to such restrictions and conditions as may be prescribed.

7. *Accounts to be maintained by occupiers.*—Every occupier who is under an obligation to get himself registered under Section 6, shall maintain true and correct accounts showing the quantity of sugarcane which entered into the local area in which the factory is situated for consumption or use therein.

8. *Returns.*—(1) Every occupier shall furnish to the prescribed authority, before the prescribed day of each month, a return stating the total quantity in tons of sugarcane which entered into the local area in which the factory is situated for consumption or use therein during the preceding month, together with such further information in regard thereto as may be prescribed. Along with the return, he shall also submit a receipt from a Government Treasury, or a

crossed cheque in favour of the prescribed authority for the full amount of the cess payable under section 4 for the month to which the return relates.

(2) Every such return shall be verified in such manner as may be prescribed.

9. *Collection of cess.*—(1) On receiving any return under section 8, the prescribed authority shall assess the cess payable in respect of the period to which the return relates and if the amount has not already been paid, shall cause a notice to be served upon the occupier requiring him to make payment of the amount assessed within ten days of the service of the notice.

(2) If the occupier fails to furnish in due time the return referred to in section 8, or furnishes a return which in the opinion of the prescribed authority is incorrect or defective, the prescribed authority shall assess the amount payable by him in such manner as may be prescribed and the provisions of sub-section (1) shall apply as if such assessment has been made on the basis of a return furnished by the occupier :

Provided that in the case of a return which he has reason to believe is incorrect or defective the prescribed authority shall not assess at an amount higher than that at which it is assessable on the basis of the return without giving to the occupier a reasonable opportunity of proving the correctness or completness of the return.

(3) A notice under sub section (1) may be served on the occupier either by registered post or by delivering it or tendering it to the occupier or his agent at the factory.

10. *Appeal and finality of assessment.*—(1) Any occupier aggrieved by an assessment made under section 9 may within three months of service of the notice referred to in sub-section (1) of that section, appeal to the Commissioner of Commercial Taxes, and on such appeal, the Commissioner of Commercial Taxes may, after giving the appellant an opportunity of being heard, cancel or modify the assessment and order the refund to such occupier, of the whole or part as the case may be, of any amount paid thereunder.

(2) Notwithstanding that an appeal has been preferred under sub-section (1), the cess shall be paid in accordance with the assessment made in the case :

Provided that the Commissioner of Commercial Taxes may, in his discretion, give such directions as he thinks fit, in regard to the payment of the cess, if the appellant furnishes sufficient security to his satisfaction in such form and manner as may be prescribed.

(3) Subject to the provisions of sub-section (1), every assessment made under this Act shall be final and shall not be questioned in any court of law.

11. *Recovery of amount due under Act.*—Any cess assessed or any other amount due under this Act may, without prejudice to any other mode of collection, be recovered—

(*a*) as if it were an arrear of land revenue, or

(*b*) on application to any magistrate, by such magistrate as if it were a fine imposed by him.

CHAPTER III

CONSTITUTION AND ADMINISTRATION OF SUGARCANE CESS FUND.

12. *Application of proceeds of cess.*—(1) The proceeds of the cess and fees recovered under this Act shall first be credited to the Consolidated Fund of the State and shall after deduction of expenses of collection and recovery be transferred to a separte fund called the State Sugarcane Cess Fund.

(2) The fund shall be expended in such manner and under such conditions as may be prescribed, for the purposes of :

(*a*) the development and improvement of cultivation, growth and marketing of sugarcane and other irrigated crops, including research for such development and improvement ;

(*b*) the development of sugar industry in the State ;

(*c*) the improvement of health, encouragement of technical education and development of communications in the notified areas in which sugarcane is grown for supply to the notified factories ;

(*d*) meeting the expenses in connection with the administration of the State Sugarcane Cess Fund and the functioning of the Advisory Committees ; and

(*e*) such other prescribed purposes.

Explanation.—For the purposes of clause (*b*), " sugar " includes Gur, Khandasari sugar and sugar candy.

13. *Constitution of Advisory Committee.*—(1) As soon as may be after the commencement of this Act, the Government shall, by notification, constitute an Advisory Committee in such manner and consisting of such persons, the total number being not more than

ten, as may be prescribed, for every area notified by the Government in which sugarcane is grown for supply to a notified factory, for the purpose of advising the Government with regard to the administration of the Sugarcane Cess Fund.

(2) The Advisory Committees shall exercise such powers and perform such functions as may be prescribed.

(3) The Government shall appoint an officer of Government to be the Secretary to each Committee.

CHAPTER IV

MISCELLANEOUS

14. *Commissioner of Commercial Taxes to be the Chief Controlling Authority.*—Subject to the control of the Government, the Commissioner of Commercial Taxes shall be the Chief Controlling Authority in respect of all matters relating to the administration of this Act.

15. *Power to inspect factories and take copies of records and accounts.*—(1) The prescribed authority shall have free access at all reasonable times during working hours to any notified factory or to any part thereof.

(2) Such authority may at any time examine the working records and accounts of any notified factory and take copies or extracts from all or any of the said records or accounts for purposes of testing the accurancy of any return, for informing itself as to the particulars regarding which information is required for the purposes of this Act or any rules made thereunder.

(3) Where the prescribed authority proposes to examine under sub-section (2) any record or account containing the description or formulae of any trade process, the occupier of the notified factory may give to the said authority, for transmission to the Government a written notice of objection and thereupon the said authority shall seal up the record or account and take further action in accordance with the orders of the Government on such objection.

16. *Disclosure of information by a public servant.*—(1) All particulars contained in any statement made, return furnished, or accounts or documents produced under the provisions of this Act, or in any evidence given or affidavit or deposition made, in the course of any proceedings under this Act (other than proceedings in a

criminal court) or in any record of an assessment proceedings or any proceedings relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential and notwithstanding anything contained in any law no court shall, save as provided in this Act be entitled to require any Government servant to produce any such return, accounts, documents or records or any part of such record or to give evidence before it in respect thereof.

(2) If, save as provided in sub-section (3), a Government servant discloses any particulars contained in any such statement, return, accounts, document, evidence, affidavit, deposition or record, he shall, on conviction, be punishable with imprisonment which may extend to six months or with fine or with both.

(3) Nothing contained in this section shall apply to the disclosure—

(*a*) of any such particulars for the purpose of a prosecution under the Indian Penal Code, in respect of any such statement, return, accounts, document, evidence, affidavit or deposition or for the purposes of a prosecution under this Act ; or

(*b*) of any such particulars to any person entrusted with the administration of this Act for the purpose of carrying out the objects of this Act ; or

(*c*) of any such particulars occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand ; or

(*d*) of any such particulars to a civil court in any suit to which the Government is a party which relates to any matter arising out of any proceeding under this Act ; or

(*e*) of any such particulars to any officer appointed to audit receipts of the cess imposed by this Act ; or

(*f*) of any such particulars relevant to any inquiry into the conduct of a Government servant to any persons appointed to hold such inquiry ; or

(*g*) of any such particulars occasioned by the lawful exercise by a public servant of his powers under any law authorising him to impound an insufficiently stamped document ; or

(*h*) of any such particulars to any assessee or his legal representative as may be necessary to furnish copies of documents or statements submitted by the assessee under this Act and to establish the correctness thereof; or

(*i*) of such facts to an officer of the Central Government as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty imposed by it.

17. *Offences and penalties.*—Any person who—

(*a*) fails to submit an application for registration under section 6, or

(*b*) fails to maintain true and correct accounts as required by section 7, or

(*c*) fails to submit a return as requried by section 8 or wilfully submits an untrue return, or

(*d*) fails to pay within the time allowed any cess assessed on him, or

(*e*) fraudulently evades the payment of any cess assessed on him, or

(*f*) prevents or obstructs inspection or entry by any officer authorised under section 15, or

(*g*) wilfully acts in contravention of any of the provisions of this Act,

shall, on conviction, in addition to the recovery of any cess that may be due from him, be punishable with simple imprisonment which may extend to six months or with fine not exceeding one thousand rupees, or with both ; and when the offence is a continuing one with fine which may extend to fifty rupees per day during the period of the continuance of the offence.

18. *Composition of offences.*—The prescribed authority may accept from any person who has committed or is reasonably suspected of having committed any offence punishable under this Act, by way of composition of such offence,—

(*a*) where the offence consists of the failure to pay or the evasion of the cess or other amount recoverable under this Act, in addition to the cess or other amount so recoverable, a sum of money not exceeding one thousand rupees or double the amount of the cess or amount recoverable, whichever is greater, and

(*b*) in other cases, a sum of money not exceeding one thousand rupees.

19. *Determination of occupier for the purpose of Act.*—(1) Where the occupier is a firm or other association of individuals, any of the individual partners or members thereof shall be responsible

for the observance of the provisions of this Act and may be prosecuted and punished under this Act for any offence for which the occupier is punishable :

Provided that the firm or association may give notice to the prescribed authority that it has nominated one of its members who is resident in the State of Mysore to be the occupier for the purposes of this Act and such individual shall so long as he is so resident be deemed to be the occupier for the purposes of this Act until further notice cancelling the nomination is received by the prescribed authority or until he ceases to be a partner or member of the firm or association.

(2) Where the occupier is a company, any one of the directors thereof, or in the case of a private company, any one of the shareholders thereof may be prosecuted and punished under this Act for any offence for which the occupier is punishable :

Provided that the company may give notice to the prescribed authority that it has nominated a director or in the case of a private company a shareholder who is a resident in either case in the State of Mysore, to be the occupier for the purposes of this Act and such director or shareholder shall, so long as he is so resident, be deemed to be the occupier for the purpose of this Act until further notice cancelling the nomination is received by the prescribed authority or until he ceases to be a director or shareholder.

20. *Assessments, etc., not be questioned in prosecution.*—The validity of the assessment of any cess or of the levy of any fee made under this Act, or the liability of any person to pay any cess or fee so assessed or levied shall not be questioned in any criminal court in any prosecution or other proceeding whether under this Act or otherwise.

21. *Bar of certain proceedings.*—(1) No suit, prosecution or other proceeding shall lie against any officer or servant of the Government, for any act done or purporting to be done under this Act without the previous sanction of the Government.

(2) No officer or servant of the Government shall be liable in respect of any such act in any civil or criminal proceeding if the act was done in good faith in the course of the execution of the duties or the discharge of the functions imposed by or under the Act.

22. *Limitation for certain suits and prosecutions.*—No suit shall be instituted against the Government and no suit, prosecution or other proceedings shall be instituted against any officer or servant of the Government in respect of any act done or purporting to be

done under this Act unless the suit, prosecution or other proceeding is instituted within six months from the date of the act complained of.

23. *Power to make rules.*—(1) The Government may, subject to the condition of previous publication, by notification make rules for the purpose of carrying into effect all or any of the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely :—

(*a*) the proportion of the gross weight of sugarcane for the purposes of deduction under the proviso to section 4 ;

(*b*) the manner in which and the authority to which application for registration shall be made under section 6 and the fee with which such application shall be accompanied ;

(*c*) the restrictions and conditions subject to which a certificate of registration shall be granted under section 6 ;

(*d*) the further information to be furnished under section 8, the authority to which and the form in which such returns shall be furnished and the manner in which such returns shall be verified ;

(*e*) the manner in which the amount payable shall be assessed under sub-section (2) of section 9 ;

(*f*) the manner in which and the conditions subject to which the State Sugarcane Cess Fund shall be expended ;

(*g*) prescribing the composition of the Advisory Committees to be constituted under this Act ; the terms of office of the members of the Committees, the allowances, if any, payable to them ; the manner in which the Committees shall conduct their business including the number of members necessary to form a quorum at a meeting thereof ;

(*h*) the maintenance by the Committees of records and the submission of the copies of such records to the Government ;

(*i*) the authority which can inspect notified factories ;

(*j*) the authority to which notice is to be given under section 19 ;

(*k*) any other matter for which there is no provision or no sufficient provision in this Act and for which provision

is, in the opinion of the Government necessary for giving effect to the purposes of this Act.

(3) In making any rule under this section the Government may provide that a breach of the rule shall on conviction, where no penalty is provided by this Act, be punishable with fine which may extend to one thousand rupees.

(4) All rules made under this section shall be laid as soon as may be after they are made before each House of the State Legislature while it is in session for a total period of one month which may be comprised in one session or in two or more sessions and if before the expiry of the said period, either House of the State Legislature makes any modification in the rules or directs that the rules shall not have effect and if the modification or direction is agreed to by the other House, the rules shall thereafter have effect only in such modfied form or be of no effect, as the case may be.

24. *Repeal and savings.*—(1) The Bombay Sugarcane Cess Act, 1948 (Bombay Act LXXXII of 1948), as in force in the Bombay Area, sections 3 and 14 and clauses (*a*) and (*b*) of sub-section (2) of section 17 of the Madras Sugar Factories Control Act, 1949 (Madras Act XX of 1949), as in force in Bellary District and Sections 3 and 14 and clauses (*a*) and (*b*) of sub-section (2) of Section 17 of the Madras Sugar Factories Control Act, 1949 (Madras Act XX of 1949), as in force in the Madras Area and the Hyderabad Sugarcane Cess Act, 1953 (Hyderabad Act IX of 1953), as in force in the Hyderabad Area, are hereby repealed ;

Provided that such repeal shall not affect—

(*a*) the previous operation of the said enactments or anything duly done or suffered thereunder ; or

(*b*) any right, privilege, obligation or liability (including liability to pay cess) acquired, accrued or incurred under the said enactments ; or

(*c*) any penalty, forfeiture or punishment incurred in respect of any offence committed against the said enactments; or

(*d*) any investigation, legal proceeding (including proceeding for recovery of cess) or remedy in respect of any such right, privilege, obligation, liability, forfeiture or punishment as aforesaid ;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed,

(2) Notwithstanding anything contained in sub-section (1),—

(*a*) for the purpose of giving effect to the proviso to sub-section (1), the Government may, by notification, make such provision as appears to it to be necessary or expedient—

(i) for making omissions from, additions to and adaptations and modifications of the rules, notifications and orders issued under the repealed enactments;

(ii) for specifying, the authority, officer or person who shall be competent to exercise such functions exercisable under any of the repealed enactments or any rules, notifications, or orders issued thereunder as may be mentioned in the said notifications;

(*b*) the Government may, by notification, reduce or remit the cess payable under any of the repealed enactments, by an occupier of a notified factory, if it is satisfied that the sugar produced in such factory is exported at a loss, out of India under a scheme sponsored by the Government of India for promotion of export of sugar.